



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,628	12/05/2000	Edward Cumming	MEWBP001	9458

25920 7590 04/15/2003

MARTINE & PENILLA, LLP
710 LAKEWAY DRIVE
SUITE 170
SUNNYVALE, CA 94085

EXAMINER

EREZO, DARWIN P

ART UNIT	PAPER NUMBER
----------	--------------

3761

DATE MAILED: 04/15/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/730,628

Applicant(s)

CUMMING

Examiner

Darwin P. Erez

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/17/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1,2 and 4-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,15,18 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 9-14,16,17,19 and 25-28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 2 and 4-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4-8, 15, 18 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,111,809 to Gamble.

4. **As to claims 1 and 21-23**, Gamble teaches a breathing circuit comprising a mouthpiece **18** (col. 3, lines 1-3), at least one gas carrying conduit (col. 3, lines 38-43), a compressed gas source **120**; and a counterlung including a primary chamber **20** and a secondary chamber **34**; wherein inflation of the secondary chamber causes inflation of the primary chamber (col. 4, lines 40-46), wherein the compressed gas source is in communication with the counterlung via the breathing circuit; and wherein the counterlung includes means for assisting expansion of the counterlung (via the flow of oxygen into the secondary chamber) and means for assisting contraction **52** of the counterlung.

Art Unit: 3761

5. **As to claim 2**, Gamble teaches valves **24, 26**, which selectively activate one of the means for assisting expansion of the counterlung and the means for assisting contraction of the counterlung depending on the respiratory phase of the user.

6. **As to claims 4 and 5**, Gamble teaches the means for assisting expansion associated with the secondary chamber, wherein the means for assisting expansion comprises a flow of the compressed gas source (col. 4, lines 47-66).

7. **As to claims 6 and 7**, Gamble teaches the means for assisting contraction is associated with the primary chamber (through platen **42**) and wherein the means for contraction is a spring **52**.

8. **As to claims 8 and 24**, Gamble teaches the secondary chamber formed within the primary chamber.

9. **As to claim 15**, Gamble teaches an exhaust valve **54**.

10. **As to claim 18**, Gamble teaches a carbon dioxide scrubber **30**.

Allowable Subject Matter

11. Claim 20 is allowed.

12. Claims 9-14, 16, 17, 19 and 25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who whose telephone number is (703) 605-0420. The examiner can normally be reached on M-F (8:30-5:00).

Art Unit: 3761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

dpe
April 1, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700